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Delegations will find in the annex the Council conclusions on safeguarding a free and pluralistic media system approved by the Council by written procedure.

These conclusions will be forwarded for publication in the Official Journal, as decided by the Committee of Permanent Representatives on 18 November 2020.

**Council conclusions on safeguarding a free and pluralistic media system**

THE COUNCIL OF THE EUROPEAN UNION

Recalling the references as set out in the annex

**RECALLING THE CURRENT POLICY CONTEXT IN WHICH**

- especially during times of crisis a **sustainable (A), pluralistic (B) and trustworthy (C) media system** is of utmost importance;
- the COVID-19 pandemic has amplified the vulnerability of the media sector in the EU, which has been disrupted by the collapse of its main sources of advertising revenues, while at the same time the demand for reliable information and content has significantly increased;
- globalisation and digitalisation have created a media environment characterised by online platforms that have become the gateways through which a global audience gains cross-border access to an abundance of media content and services, competing for users' limited attention;

## **A. SUSTAINABILITY**

### **ACKNOWLEDGES THAT**

1. the COVID-19 pandemic has exacerbated some of the main challenges that the media sector has already been facing for quite some time including the following:
  - sharp declines in revenues, experienced especially by local, regional and traditional media outlets and increasing challenges to the overall sustainability of the media sector. This is a sector largely comprised of companies which are an expression of Europe’s cultural and linguistic diversity, but often do not have the size or financial weight to operate in pan-European and global markets;
  - the data-driven business models used by online platforms (i.e. content recommendation engines, personalisation of content and all forms of targeted advertising) are increasingly outpacing the media’s financing models. The spending on digital advertising on platforms is expected to exceed the spending on advertising on traditional media in the near future;
2. media service providers invest in content production and are subject to strict responsibilities, while online platforms, giving access to third party content, often monetize it without having to fulfil the same obligations. This can cause a lack of a level playing field which can give some market players competitive advantages;
3. there is a need to recall the importance of the key principles of financing media content which underpin the whole value chain and safeguard media pluralism. For example, territorial and exclusive allocation of licensing rights can often be crucial for the audiovisual media sector. The development of new innovative business models is also of great importance;
4. the Union’s financial interest shall be protected in accordance with the general principles embedded in the Union Treaties, in particular the values of Article 2 TEU;

## **INVITES THE EU MEMBER STATES TO**

5. provide an adequate and independent framework for economical sustainability of the national media landscape, including state aid, to support a recovery from the crisis and thus ensure a pluralistic media system in the long run. Any state funding or subsidisation should be based on predetermined, objective and transparent criteria, independent from any political influence;
6. examine other possible options and incentives at national level in order to facilitate additional support for the recovery of the media sector;

## **INVITES THE EUROPEAN COMMISSION TO**

7. mitigate the negative effects of the pandemic on the media sector (in particular on media pluralism) by complementing national state aid efforts and creating effective synergies between European initiatives including the MFF, the ‘Next Generation Europe’ recovery instrument and other relevant EU programmes as appropriate;
8. inform stakeholders of relevant EU funding opportunities for the creative and media sectors through an EU-wide online portal;
9. continuously evaluate state aid rules and ensure the proper implementation of EU rules applicable to state aid in the media sector;
10. in order to facilitate support from national authorities, evaluate the application of state aid rules for the press sector, with a view to make suitable adaptations, for example within the Block Exemption Regulation. Those rules should under no circumstance allow or justify any direct or indirect state interference with the editorial independence of the media;
11. strengthen the resilience of the media sector, which has been badly affected by the crisis, stimulate its adaptation to address the digital and the green transformation and foster the availability of diverse and independent media content in a fair and competitive media environment through the Media and Audiovisual Action Plan;

12. refine the responsibilities of online platforms within the Digital Services Act. Any new specific obligations for online platforms should be adequate and proportionate and duly consider the possible impacts on the level playing field and safeguarding media pluralism. New horizontal EU legal acts should be coherent with sector-specific legal instruments in force, such as the Audiovisual Media Services Directive and the Copyright Directive;

**INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THEIR RESPECTIVE SPHERES OF COMPETENCE AND WITH DUE REGARD FOR THE PRINCIPLE OF SUBSIDIARITY, TO**

13. ensure a legal and economic framework that allows media service providers to sufficiently monetize their content by
- supporting and stimulating the development of new, sustainable and collaborative business models, in particular for local, regional and traditional media outlets;
  - acknowledging the importance of advertising for the media sector and its crucial role in ensuring users’ free access to information;
  - evaluating advertising regulation and related data protection measures in the digital age to ensure that they facilitate the financing of media content;
  - carrying out research into the roles of online advertising, the use of data, collaboration around data and media innovation;
  - incentivising platforms to adequately remunerate media content providers and authors for the content monetized by platforms and ensure that they respect intellectual property rights;
  - assessing the need and possible ways of facilitating access to financing opportunities for media outlets to overcome liquidity shortfalls;

## **B. PLURALISM**

### **ACKNOWLEDGES THAT**

14. safeguarding media pluralism primarily falls under the competences of the EU Member States, while the EU institutions should also respect media freedom and pluralism within the exercise of their respective competences. The diversity of the different national media landscapes across Europe is an important expression of the cultural diversity of its Member States and must be recognised as such;
15. freedom of expression, freedom of the media and media pluralism are democratic values of the European Union, as set out in Article 11 of the Charter of Fundamental Rights of the European Union. Their protection is among the overarching objectives of media regulation. They are crucial for a vibrant democracy where those principles and fundamental rights are being upheld;
16. the concept of media pluralism has many aspects and encompasses all measures that ensure access to a variety of information and content sources and allow diverse actors with different opinions to have equal opportunities to reach the public through the media;
17. bridging the gap between what users are looking for online and the content to be found is of key relevance for media content providers. A deep understanding of information management, search engine indexing and keyword matching is therefore among the crucial skill sets for media content providers online;

## **EMPHASISES THAT**

18. we live in a hybrid media system (offline and online) in which all types of media services and forms of content contribute to a pluralistic media landscape. Information, news and current affairs as well as cultural, local, regional, educational and entertaining content carries and reflects the values of our society;
19. a dual media system consisting of stable, adequately financed and future-oriented public service media and private media outlets is well designed to contribute to media pluralism. Moreover, an increasing amount of online user-generated content also contributes to the diversity of content in the online media ecosystem, but needs to be distinguished from editorial media content;
20. in the platform economy strong network effects contribute to new forms of market concentration and monopolisation tendencies can be observed, which may have a negative effect on media pluralism. Former issues of limited transmission capacities have now been supplemented by issues regarding transparency, non-discrimination, findability and discoverability;

## **AGREES THAT**

21. due to digital developments and media convergence the media landscape is growing increasingly complex and the tools to ensure media pluralism need to be continuously reconsidered and redefined. In the current context, future media policy should consider the following important issues;

## **ACCESSIBILITY AND NON-DISCRIMINATION**

- how to ensure the presence (availability) and ease of use (accessibility) of diverse content online;
- non-discriminatory rules for online platforms with a gatekeeper role in terms of access and equal treatment for media content providers;

## TRANSPARENCY AND USER AUTONOMY

- transparency regulations for online platforms leading to the disclosure of the central criteria for the aggregation, selection and presentation of media content and their weighting, including information on the functioning of the algorithms used, while respecting trade secrets, protecting the integrity of services and taking into account existing regulation such as the P2B regulation and the GDPR;
- disclosure of information in a language that is simple, concise and understandable for users, in order to enable them to make informed decisions;
- offers of personalised content should be based on criteria which have been provided voluntarily and/or selected by the user to enhance user autonomy;

## FINDABILITY AND DISCOVERABILITY

- algorithms affecting the results that users are actively searching for (findability) and the media content that users are passively exposed to (discoverability), as well as their impact on the user's media consumption;
- measures such as pluralism-oriented must-show rules (enhanced findability and discoverability) for actors that give access to and organise media content, taking new technologies such as voice assistants into account;
- any criteria for enhanced findability and discoverability for media offers should favour pluralism and cultural diversity, and not be related to the content itself;

## MEDIA MARKET CONCENTRATION AND DATA ACCESS

- approaches to assess relevant markets and media market concentration in the light of media convergence, globalisation and digitalisation, taking into account the importance of the availability of market share data of media actors;
- in accordance with applicable data protection laws, fair access for content creators, media outlets and regulators to relevant data collected by dominant market players, to enable them to effectively address relevant audience and advertising groups;
- with regard to competition law, enabling cooperation between media service providers – public and private – in order to form alliances to successfully produce and distribute media content of general interest without being dependent on large platforms, while carefully taking into consideration the possible impact on media pluralism;

### NOTES THAT

22. there is an increasing thematic overlap of the work of the Audiovisual Working Party with that of other working parties and a need to ensure sufficient exchange with those dealing with media-related issues. Furthermore, an adaptation of the name of the Audiovisual Working Party is appropriate in order to reflect the changes brought about by media convergence;

### INVITES THE EU MEMBER STATES TO

23. further evaluate and develop national measures to assess media pluralism to ensure that users are exposed to a variety of content and can fully enjoy their freedom of expression and their right to information;
24. take due account of the findings of these Council Conclusions into upcoming national media regulation and policy measures to adequately safeguard media pluralism;

## **INVITES THE EUROPEAN COMMISSION TO**

25. continue and further develop research to identify potential risks to media pluralism and further understand the changed position of editorial media outlets in relation to social media, search engines, video-sharing platforms and other media platforms; concepts of information science should explicitly be taken into account;
26. take into account Member States' competence to adopt measures to achieve social, cultural and democratic goals, based on their linguistic diversity, national and regional specificities and their interest to maintain public access to diverse information and content;
27. foster a holistic policy perspective, taking into account legal, political and economic variables that are relevant to safeguarding media pluralism and media freedom and be especially conscious of the possible effects of regulatory initiatives that are not traditionally considered as media regulation but have a major impact on media pluralism; develop such a holistic approach beginning with the announced European Democracy Action Plan, the Media and Audiovisual Action Plan and the Digital Services Act package;
28. strengthen horizontal coherence in the regulatory framework, by explicitly and structurally taking media pluralism into account in the legislative process during the impact assessment of regulatory initiatives;
29. establish a "European Media Forum" to discuss current media policy issues among all relevant stakeholders on a yearly basis;

## **C. TRUSTWORTHINESS**

### **ACKNOWLEDGES THAT**

30. disinformation constitutes a threat to democratic processes, public health and societies and can foster hate speech and incitement to violence online and offline, along with undermining trust in democratic state structures and processes that are vital in guaranteeing freedom of the press and media;
31. safeguarding a trustworthy media system is central, as highlighted during the COVID-19 crisis, to ensure that all citizens are able to participate in the democratic debate through informed decision-making, free from undue political influence, pressure of third party policies, manipulative interference and the effects of disinformation;
32. editorial media service providers are competing for users' attention on platforms with other content producers who often do not observe the same editorial standards. Sensationalist and provocative content is often used to maximise engagement rates and advertising revenues;

### **EMPHASISES THAT**

33. safeguarding media pluralism also means ensuring freedom for users to participate and engage with media content online without fear or risk of harassment by protecting the fundamental core values of a free media system, including protection of freedom of expression, protection from violence and hatred, protection of human dignity, protection of minors and protection of consumers;
34. there is a rising amount of dissemination of content originating from European or non-European countries which increasingly includes content that violates fundamental core values of the European and national media systems;
35. a few online platforms, originally non-European, are increasingly influencing the access to media content by users across the EU;

## **AGREES THAT**

36. effective law enforcement is difficult since the existing processes of cross-border law enforcement are often complicated, long-lasting, inefficient and lack effective protection for the public. National regulatory authorities should therefore strive to find more effective common rules and enforcement procedures for content that is accessible online and distributed across national borders;
37. major platforms which act as gatekeepers often exercise ‘secondary’ control over content that already complies with editorial standards and the applicable legal provisions;
38. distinguishing the various manifestations of false and misleading content and identifying typical methods of dissemination of disinformation (e.g. through coordinated inauthentic behaviour) is crucial for finding appropriate and individual responses;
39. with regard to the importance of the freedom of speech, states and administrative regulatory authorities as well as private platform providers should abstain from defining quality content or the reliability of content itself. This should not prevent platforms from promoting public communications and announcements in case of crisis or emergency situations;

## **INVITES THE EU MEMBER STATES TO**

40. promote media literacy as stated in the Council Conclusions on media literacy in an ever-changing world and especially support national media literacy actions that combat disinformation, strengthen audiences’ resilience and target citizens of all age groups;
41. encourage their national regulatory authorities to cooperate with other national regulatory authorities, in particular within the European Regulators Group for Audiovisual Media Services (ERGA), and evaluate national rules on legal and administrative cooperation as well as the suitability of the competences of the independent national media authorities to address digital challenges and enforce the existing regulations;

## **INVITES THE EUROPEAN COMMISSION TO**

42. take appropriate measures based on previous assessments of the implementation of the Code of Practice on Disinformation and in line with the overarching freedom of speech principle in order to identify existing gaps and prevent public harm by addressing the manipulative dissemination techniques of disinformation inter alia under the framework of the announced European Democracy Action Plan;
43. strengthen Europe's media regulation in regard to the new digital challenges with an emphasis on cross-border content distribution by optimizing the procedures and the functioning of the country of origin principle to ensure that cross-border enforcement of media regulations is able to effectively protect media users, consumers and minors;
44. strengthen the effective enforceability of existing rules in cross-border cases, support the Memorandum of Understanding on simplified procedural rules for cross-border law enforcement prepared by the national regulatory authorities within ERGA and enhance support for the administration, implementation and enactment of this cooperation agreement;

**INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THEIR RESPECTIVE SPHERES OF COMPETENCE AND WITH DUE REGARD FOR THE PRINCIPLE OF SUBSIDIARITY, TO**

45. promote the development of structural and procedural indicators for trustworthiness of news and media outlets and thus promote compliance with professional norms and ethics;
46. work with civil society organisations, researchers, professional journalists and other relevant experts, to develop tools identifying disinformation (i.e. by technical fact-checking processes) in order to make citizens aware of any concerns regarding the trustworthiness of the given information;
47. support the development of the European Digital Media Observatory (EDMO) in the effort to detect and expose disinformation campaigns across different social networks and digital media, as set out in the EU Action Plan against Disinformation.



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